

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
)	EB Docket No. 04-296
Review of the Emergency Alert System)	
)	
To the Commission		

REPLY COMMENTS

On September 20, 2005, the Independent Spanish Broadcasters Association (“ISBA”), the Office of Communication of the United Church of Christ, Inc. and the Minority Media and Telecommunications Council (collectively “Petitioners”) filed a Petition for Immediate Interim Relief (“Petition”). Therein Petitioners offered five specific, immediate steps the Commission could take to ensure the widespread availability of multilingual emergency communications. Petitioners explained that the paucity of available multilingual broadcasts before, during and after Hurricane Katrina had put lives at risk. Thousands of people not fluent in English did not appreciate how serious the danger was, or did not know how to avoid further danger when they returned to their homes. Many broadcast and emergency managers are unfamiliar with this problem.¹ The problem would be much worse if there were a non-natural emergency.²

¹ See “No EAS for Katrina,” *Radio World*, October 12, 2005, p. 6 (“[d]espite the potential for major disaster, most local emergency managers chose not to activate the Emergency Alert System as Hurricane Katrina rushed ashore.” Clay Freinwald, Chairman of the Society of Broadcast Engineers EAS Committee, was among the experts interviewed by *Radio World*. Mr. Freinwald said that “Katrina was well publicized in advance by any number of news media outlets and therefore did not qualify” for a warning.” Richard Rudman, Vice Chair of the California State EAS Emergency Communications Committee, said it was clear that the word to “bug out got out[.]” *Id.* No disrespect is intended by noting that many experts apparently were focused on English language warnings, rather than warnings dedicated to non-English speakers. During the critical period between August 28 and September 5, as many as 300,000 people were without emergency information because they do not speak English fluently. See Petition at 1-2.

² As Petitioners noted, there are over 100,000 Latinos in the Detroit market, which has no Spanish language broadcast media. See Petition at 10 n. 26. Recall that on October 5, 1966, the Fermi I nuclear plant suffered a near-meltdown and “we almost lost Detroit.”

After Katrina, the Commission served as a model of federal efficiency and effectiveness, acting immediately to waive rules that impeded the robust flow of emergency communications. The Commission should exercise that same can-do spirit when it comes to ensuring the widespread availability of multilingual emergency communications. This is a matter of life and death, and it ought not to be bogged down in red tape and further “study.” Fortunately, this is not difficult, it is not controversial, and it is squarely within the Commission’s powers.

In its October 14, 2005 “Comments in Response to Petition for Immediate Interim Relief” (“NAB Comments”) the National Association of Broadcasters (“NAB”) acknowledges the importance of providing multilingual emergency communications and specifically states that the goal of the petition is “laudable.”³ Further, the NAB does not contend that the Commission may not provide interim relief pending resolution of the other issues in this docket,⁴ and it does not express disagreement that the proposals set out in the Petition would be a logical outgrowth of the notice of proposed rulemaking.⁵ Finally, the NAB recognizes that “the Commission can require the creation of additional and specialized LP stations⁶ -- the core element of Petitioners’ proposals.”⁷

The NAB presents five questions. Four of them are easily answered, and the fifth inspires an improvement in Petitioners’ proposals.

1. The NAB questions whether the Commission can require state and local entities to develop emergency plans that would implement the new LP designations. NAB Comments at 3. While the Commission cannot dictate in advance each granular detail of a state or local EAS

³ NAB Comments at 2; *see* Petition at 1-10.

⁴ Petition at 16 and n. 39.

⁵ *Id.* at 16-17 and ns. 40-41.

⁶ NAB Comments at 3.

⁷ The NAB does not offer alternatives to Petitioners’ proposals.

plan, such as where an LP-S and LP-M station will be located and how they will communicate amongst themselves and with other broadcasters, the Commission has ample authority to withhold approval of an EAS plan that does not provide adequately for multilingual EAS communications. *See* 47 C.F.R. §11.21. As the NAB points out, “once created, state and local plans [shall] be reviewed and approved by the Director of the Office of Homeland Security, Enforcement Bureau[.]” NAB Comments at 3.⁸ Thus, when it rules on the Petition, the Commission can give notice that it expects state and local EAS plans to be amended promptly to address multilingual issues, and that it will grant approval only of those amended plans that reasonably provide for widespread multilingual communications, generally along the lines offered by Petitioners. The relief requested is simple. Multilingual EAS communications should be a part of the EAS framework established by the Commission and implemented by state and local plans.⁹

⁸ The NAB’s suggestion that FEMA act before the Commission acts on multilingual EAS is a nonstarter. *See* NAB Comments at 3-4. Among other things, statutory authority over broadcasting vests exclusively with the Commission. 47 U.S.C. §151 (creating the Commission, *inter alia*, “for the purpose of promoting safety of life and property through the use of wire and radio communication”); *see also Review of the Emergency Alert System (NPRM)*, 19 FCC Rcd 15775, 15778 ¶10 (2004) (providing other sources of jurisdiction, including 47 U.S.C. §§154(i) and (o), 303(r) and 606). FEMA can assist state and local governments in designing EAS plans, but ultimately it is up to the Commission to say what a reasonable plan must contain.

⁹ Along similar lines, the NAB asks how multilingual Presidential messages would be aired given that the Commission “does not possess the authority to mandate the content of Presidential level messages.” NAB Comments at 2. The Commission cannot direct the President to provide translations and Petitioners have not requested such relief. The Petitioners simply noted that “[t]his minor modification to the existing EAS rules *can be easily implemented if* Presidential level messages are delivered to the 34 PEP stations by FEMA in Spanish.” Petition at 13 (emphasis supplied). An inquiry from the Commission to the White House could resolve this uncertainty. Alternatively, the Commission could require the messages to be translated by the PEP stations with appropriate funding. The Commission already has permitted Spanish language broadcasters to translate these messages. 47 C.F.R. §11.54(b)(7). Using 47 C.F.R. §11.21, the Commission can provide that other broadcasters will broadcast these translated messages. Again, the relief requested is simple. If the EAS is activated nationally, non-English speakers should also have access to this critical information.

2. The NAB asks how non-English speaking listeners would be alerted “if they are not tuned into the one ‘designated’ monitoring station, particularly if there are more than one LP-M stations.” NAB Comments at 4-5. In an emergency, English language listeners face the same quandary when they seek out PEP or LP-1 stations. Those listeners resolve this quandary by turning the dial until they find the emergency information they need.

3. The NAB suggests that the Commission should “carefully consider how non-English speaking persons are currently receiving their information, including emergency information provided on non-English broadcast channels, to ensure that a public warning system designed to reach non-English speakers effectively reaches its intended audience.” NAB Comments at 5. Fortunately, ample data already illustrates how ethnic minorities use radio.¹⁰ In June 2005, New California Media and the Leadership Conference on Civil Rights published the first comprehensive study of ethnic media, which found that 82% of Latinos and 54% of Asian Americans rely more on ethnic media than general market media for “information about your native country or about issues that are important to your ethnic community.” That finding should generally predict the radio listening of Latinos and Asian Americans during emergencies,¹¹ and it underscores why LP-S and LP-M stations are so vital to any meaningful effort to make multilingual emergency communications generally available. More statistics can always be generated on any policy issue, but the NAB does not explain why any particular data point not in the record is needed before the Commission can issue an interim ruling on Petitioners’ proposals.

4. The NAB asks how English language stations could receive multilingual content for rebroadcast if LP-S or LP-M stations lose transmission. NAB Comments at 5-6. The answer is

¹⁰ Petitioners are unaware of audience surveys of multilingual radio listeners – or English language listeners – during emergencies.

¹¹ See Petition at 9 n. 24 (giving key findings of the study, New California Media and Leadership Conference on Civil Rights, *Ethnic Media in America: The Giant Hidden in Plain Sight* (June 2005)) (available at <http://www.civilrights.org/issues/communication/details.cfm?id=32049>).

that English language stations would receive multilingual content from another station in the relevant queue as provided by a state or local EAS plan or from the state and local authorities with appropriate funding. ISBA has volunteered to help fellow broadcasters make these arrangements. Petition at 14. This is an example of the kind of detail that state and local officials should resolve in light of local conditions, subject to final review and approval by the Enforcement Bureau's Office of Homeland Security.¹²

5. Finally, one of the NAB's questions inspires an improvement in Petitioners' original proposals. The NAB asks how a station can monitor LP-S and LP-M stations if these stations' broadcasts are out of range due to terrain or signal obstructions, and how stations on the air would know which LP-S and LP-M stations have been knocked off the air. NAB Comments at 4-5. Petitioners sympathize with the NAB on this point. While any broadcaster can survey the dial periodically, it might be difficult for a broadcaster, operating shorthanded during an emergency, to detail an employee to perform such a survey. It would be more efficient for the Commission, during and after an emergency, to post on its home page in real time a link to a list of PEP, LP-1, LP-S and LP-M stations remaining on the air. The Regional and Field Offices of the Enforcement Bureau routinely monitor all stations; thus, the Enforcement Bureau could easily maintain this information on the Commission's website during emergencies.

The Commission has both the jurisdiction and the moral authority to immediately grant all of Petitioners' prayer for relief. Specifically, the Commission should issue an interim ruling in which it would declare that (1) it expects state and local EAS plans to be amended by a date certain and soon (no later than the end of 2005, and preferably much sooner), and that (2) it will

¹² Another such detail is the definition of what constitutes a "part of their broadcasts" on which English language stations would transmit non-English emergency information if LP-S and LP-M stations were not operational. *See* NAB Comments at 5. The answer depends on the capabilities present in each market, including assistance available from adjacent market stations in the same state. Petitioners encourage the Commission to provide expert guidance to state and local authorities on this question.

approve these amended plans if they are designed to ensure that before, during and after a disaster, emergency information will be broadcast in Spanish and, also, in other languages spoken by at least 5% of the market's population or 50,000 people, whichever is less.¹³

Respectfully submitted,

David Honig

David Honig
Executive Director
Joseph Miller
Counsel
Minority Media and
Telecommunications Council
3636 16th Street NW
Suite B-366
Washington, D.C. 20010
(202) 332-7005

Counsel for the Independent Spanish
Broadcasters Association, the Office of
Communication of the United Church of
Christ, Inc., and the Minority Media and
Telecommunications Council

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¹³ Petitioners offered this formulation in the Petition at 4 n. 10. The NAB does not offer an alternative formulation.

CERTIFICATE OF SERVICE

I, David Honig, hereby certify that I have this 18th day of October, 2005 caused a copy of the foregoing "Reply Comments" to be delivered by electronic mail and by U.S. First Class Mail, postage prepaid, to the following:

Hon. Kevin Martin, Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Hon. Kathleen Abernathy, Commissioner
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Hon. Michael Copps, Commissioner
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Hon. Jonathan Adelstein, Commissioner
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Donna Gregg, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Kris Monteith, Esq.
Chief, Enforcement Bureau
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Marsha J. MacBride, Esq.
National Association of Broadcasters
1771 N St. N.W.
Washington, D.C. 20036

David Honig

David Honig